

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

ROBERT EDWARD KUBIAK,

Plaintiff,

vs.

COUNTY OF RAVALLI, SHERIFF  
STEPHEN HOLTON, DEPUTY  
DARYL PETZ, and John Does 1-10,

Defendants.

CV 20-36-M-DWM

ORDER

The Court granted Defendants' motion for summary judgment, without entering a final judgment, on June 9, 2021. (Doc. 46.) The plaintiff, Robert Kubiak, subsequently filed a notice of acceptance of Defendants offer of judgment in the amount of \$50,000 pursuant to Federal Rule of Civil Procedure 68. (Docs. 47, 47-1.) Defendants object to entry of judgment in Kubiak's favor on the grounds that the Court's grant of summary judgment rendered Defendants' offer moot. (Doc. 48 at 1.)

Defendants' argument that the offer was rendered moot would be legitimate if judgment had been entered in their favor. *See Collar v. Abalux, Inc.*, 895 F.3d 1278 (11th Cir. 2018) ("[The plaintiff's] opportunity to accept the offer of judgment terminated when the district court entered a final judgment in favor of

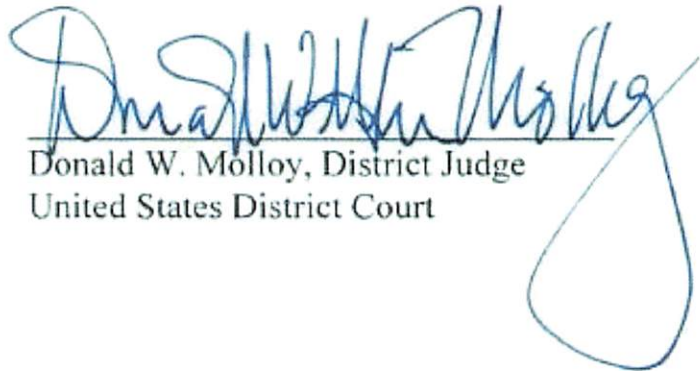
[the defendants].”). But, in this case, the Court only granted summary judgment in Defendants’ favor; it did not enter final judgment. (*See* Doc. 46 (“A reasoned decision will follow in due course. Judgment will be entered at that time.”).)

“[T]he plain language of Rule 68 mandates that an offer of judgment remain valid and open for acceptance for the full ten-day<sup>1</sup> period outlined in the Rule despite an intervening grant of summary judgment by the district court.” *Perkins v. U.S. W. Comms.*, 138 F.3d 336, 339 (8th Cir. 1998). Accordingly,

IT IS ORDERED that Defendants’ objection (Doc. 48) is overruled.

Pursuant to Rule 68, the Clerk will enter judgment for Kubiak. (Doc. 47.)

DATED this 14th day of June, 2021.



Donald W. Molloy, District Judge  
United States District Court

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<sup>1</sup> Decided prior to amendment to Rule 68 that provides for 14 days.